

GUIDELINE 14: RETAINERS

General

1. In the context of providing legal services, the word *retainer* may mean any or all of the following:
 - the client's act of hiring the paralegal to provide legal services (i.e., a *retainer*),
 - the contract that outlines the legal services the paralegal will provide to the client and the fees and disbursements and HST to be paid by the client (i.e., a *retainer agreement*), or
 - monies paid by the client to the paralegal in advance to secure his or her services in the near future and against which future fees will be charged (i.e., a *money retainer*).

The Retainer Agreement

Rule Reference: Rule 5.01(1)

2. Once the paralegal has been hired by a client for a particular matter, it is advisable that the paralegal discuss with the client two essential terms of the paralegal's retainer by the client: the scope of the legal services to be provided and the anticipated cost of those services. The paralegal should ensure that the client clearly understands what legal services the paralegal is undertaking to provide. It is helpful for both the paralegal and client to confirm this understanding in writing by
 - a written retainer agreement signed by the client,
 - an engagement letter from the paralegal, or
 - a confirming memo to the client (sent by mail, e-mail or fax).
3. This written confirmation should set out the scope of legal services to be provided and describe how fees, disbursements and HST will be charged (see Guideline 13: Fees).

The Money Retainer

Rule Reference: By-Law 9, part IV Rule 5.01

4. If practical, the paralegal should obtain a money retainer from the client at the beginning of the relationship. When determining the amount of the money retainer, the paralegal should consider the circumstances of each case, the circumstances of the client and the anticipated fees, disbursements and HST. Many of the factors are the same as those used in deciding if a fee is fair and reasonable.
5. The client should be advised at the outset if and when further retainers will be required. There may also be circumstances where a money retainer is not appropriate, for example, when a client and the paralegal have entered into a contingency fee agreement.

6. A money retainer must be deposited into a paralegal's trust account. After the paralegal has delivered to the client a statement of account or bill, the paralegal pays the amount of his or her statement of account from the money retainer held in trust. Disbursements and expenses paid on behalf of the client to others may be paid directly from the money retainer in the paralegal's trust account. To avoid disagreements in circumstances where a disbursement will be particularly substantial, a paralegal may want to obtain the client's approval prior to the expense being incurred.